

REMARKS

Claims 1, 2 and 6-9 are pending. Claims 8 and 9 are added. No new matter is involved.

The Examiner is respectfully requested to reconsider the rejections in view of the remarks set forth herein.

Rejections under 35 USC § 102

Claims 1, 2, 6 and 7 stand rejected under 35 USC § 102(b) as being anticipated by U.S. Patent 4,352,513 to Gunther. This rejection is respectfully traversed.

A prior art reference anticipates the subject matter of a claim when that reference discloses every feature of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997) and Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed Cir. 1997). While, of course, it is possible that it is inherent in the operation of the prior art device that a particular element operates as theorized by the Examiner, inherency may not be established by probabilities or possibilities. What is inherent, must necessarily be disclosed. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993).

During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the applicant is entitled to the patent. However, when a *prima facie* case is made, the burden shifts to the applicant to come forward with evidence and/or

argument supporting patentability. Patentability is then determined on the entirety of the record, by a preponderance of evidence and weight of argument.

Additionally, findings of fact and conclusions of law by the USPTO must be made in accordance with the Administrative Procedure Act, 5 U.S.C. §706(A), (E) (1994). Zurko v. Dickinson, 527 U.S. 150, 158, 119 S.Ct. 1816, 1821, 50 USPQ2d 1930, 1934 (1999).

A claim limitation is inherent in the prior art if it is necessarily present in the prior art, not merely probably or possibly present. Rosco v. Mirro Lite, 304 F.3d 1373, 1380, 64 USPQ2d 1676 (Fed. Cir. 2002). The dispositive question regarding anticipation is whether one skilled in the art would reasonably understand or infer from the prior reference's teaching that every claim feature or limitation was disclosed in that single reference, Dayco Products, Inc. v. Total Containment, Inc., 329 F.3d 1358, 1368, 66 USPQ2d 1801 (Fed. Cir. 2003).

Gunther does not anticipate the claimed invention because its engagement means 98 is not located at a second end of spring catch 80. Col. 4, lines 1-19 discloses that spring catch 80 "is formed of a single unitary piece of somewhat resilient material such as spring steel," and "includes an anchor portion 82 which is a substantially flat element affixed directly to the underside of lever 40 in a conventional manner such as by rivet 84. A U-shaped curved intermediate portion 86 extends from anchor portion 82 and terminates in an extending actuator arm 88. The U-shaped intermediate portion is interrupted by a slot 90 which has a dual purpose. The slot weakens the intermediate portion 86 which takes the form of a pair of U-shaped legs 92 and 94. This enhances the resilient properties of the spring catch 22 and accordingly makes it easier to operate in the manner described below. Additionally, the slot 90 provides a recess for introduction of shank 64 of

tang 66 when the lever is moved into the closed position and spring catch 80 engages with locking lip 58(emphasis added).”

This portion of Gunther, along with inspection of Figs. 2, 3 and 6 of Gunther makes it clear that the first end of spring catch 80 is attached to lever 42 by rivet 84, and the second (opposite) end of spring 80 is the free top end of actuator arm 88 which projects through aperture 100 in lever 42.

Gunther’s projecting fingers 98 are clearly shown in Figs. 2, 3 and 6, and described in col. 4, lines 20-28, as being located just above the middle u-shaped portion of spring 82. This location of projecting portion 98 is clearly not at either the first end, or the opposite second end of spring 82. Thus, Guenther’s projecting fingers 98 do not constitute “a second end of said leaf spring . . . forming engagement means adapted to engage the abutment means in a closed position of the fastener,” as alleged in the rejection.

With respect to claim 2, inspection of Figs. 2, 3 and 6 clearly reveals that beveled lower portions 104 of Gunther’s guide fingers 98 clearly do not encompass any portion of the lever 42. In fact, guide fingers 98 are located wholly below lever 42. The assertion that “bent: is not given any patentable weight because it is a method limitation in an apparatus claim is not persuasive because “bent” is used as an adjective, not a verb, and clearly describes the metes and bounds of the invention in a manner that imparts patentable weight thereto.

Accordingly, the Office Action fails to make out a *prima facie* case of anticipation of the claimed invention by Gunther.

Reconsideration and withdrawal of this rejection of claims 1, 2, 6 and 7 are respectfully requested.

New Claims

Claim 8 is clearly supported by Applicant's originally filed application at, for example, page 5, lines 24 and 26, and by Figs. 5 and 6. Claim 9 is clearly supported by Applicant's originally filed application at, for example, page 5, lines 16-17, and by Figs. 5 and 6.

These dependent claims are allowable at least because they depend from allowable claim 1, and also because of the features recited therein, which are neither disclosed nor suggested by Gunther.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot, and the new claims patentably define over the applied art. It is believed that a full and complete response has been made to the outstanding Office Action, and that the present application is in condition for allowance.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone Robert J. Webster (Reg. No.46,472) at (703) 208-8076.

Application No. 10/533,016
Art Unit:3676

Docket No. 0091-0246PUS1
Reply to Office Action of July 16, 2007

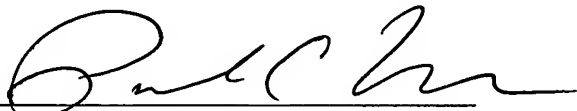
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly extension of time fees.

Date: November 16, 2007

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By



Paul C. Lewis
Reg. No. 43,368

P. O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000
Attorney for Applicant

PCL/RJW:mmi

